

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF PUERTO RICO

IN THE MATTER OF:	:	
	:	
ADRIAN BONILLA MONTALVO	:	
	:	Case No. 87-00304 (GAC)
Debtor	:	
	:	Chapter 11
	:	
ADRIAN BONILLA MONTALVO	:	
	:	Adv. No. 89-0029
Plaintiff	:	
	:	
v.	:	
	:	
BANCO COMERCIAL DE MAYAGUEZ	:	
NEFTALI ROSA, EUGENIO RIVERA,	:	
DAGOBERTO MONTALVO IGNACIO,	:	
NECA MORTGAGE, EDDIE ACARON AND	:	
FRANK RAMIREZ RAMIREZ	:	DECISION AND ORDER
	:	
Defendants	:	
	:	

BACKGROUND

On August 2, 1982, the Superior Court of Puerto Rico, Mayaguez Part entered a judgment in case CS 81-1138 against Adrian Bonilla Montalvo ("Bonilla") for \$35,776 plus interest after November 4, 1981 at the rate of 17%. The plaintiff was Banco Comercial de Mayaguez, now named Banco Bilbao Vizcaya Puerto Rico (hereinafter "Bank"). The judgment arose from Bonilla's default on a loan provided by the Bank to Bonilla. The decision granting the Bank judgment against Bonilla in the amount of \$35,776 plus interest at

the rate of 17% was affirmed by the Supreme Court of Puerto Rico on January 20, 1983.

On February 19, 1987, Bonilla filed a bankruptcy petition under Chapter 11. On April 2, 1987, the Bank filed a claim in the amount of \$24,996 as the amount owing on the judgment obtained in CS 81-1138. Bonilla filed this adversary proceeding on February 17, 1989, alleging that the state court proceedings in CS 81-1138 were tainted by fraud. Bonilla requests that this court set aside the judgment in favor of the Bank in CS 81-1138.

The Bank contends that prior to filing bankruptcy, Bonilla brought an action in state court, CS 84-552, alleging that the judgment in CS 81-1138 was obtained through fraud. The Bank indicates that CS 84-552 was dismissed by the Superior Court, Mayaguez Part and the Supreme Court of Puerto Rico affirmed the dismissal.

On April 22, 1992, the Honorable Sara de Jesús dismissed this adversary complaint with prejudice finding that Bonilla had not submitted evidence of fraud and that because the state court judgment was entitled to full faith and credit, the issue of fraud was *res judicata*. As to the other defendants, Judge de Jesús found that Bonilla failed to state a claim upon which relief could be granted. Bonilla appealed the decision to the U.S. District Court

for the District of Puerto Rico.

The Honorable Judge Jose A. Fusté remanded the adversary proceeding back to the bankruptcy court on July 8, 1993, "with instruction to request the parties to furnish the local decisions allegedly documenting debtor's previous litigation of fraud as it pertains to this case." In the Matter of Montalvo, 157 B.R. 510, 512 (D. Puerto Rico 1993). Judge Fusté's decision further states that "[i]f fraud has been previously argued, a dismissal with prejudice would be in order on *res judicata* grounds. If fraud has not been previously litigated, the bankruptcy court must schedule a hearing on the fraud issue and proceed to decide the case according to relevant law." Id.

Pursuant to the instructions of the District Court, Judge de Jesús held a status conference on October 19, 1993, to address the remand order. The parties were ordered to file the appropriate documentation pertaining to whether the state courts had considered the issue of fraud.

On December 22, 1993, the Bank filed a motion submitting the state court documents in support of its position that the issue of fraud was previously litigated. Bonilla filed a motion in opposition on January 7, 1994.

On April 27, 1994, Bonilla moved for the issuance of a writ of

mandamus in the District Court against Judge de Jesús directing her to render a decision on the fraud issue. On September 6, 1994, Judge de Jesús entered an order disqualifying herself from this adversary proceeding because Bonilla had filed suit seeking the writ of mandamus ordering her to resolve the remanded issues. The case was then transferred to this court's docket.

DISCUSSION

In his opinion remanding this case back to the bankruptcy court, Judge Fusté summarized the doctrine of *res judicata* as it relates to a collateral attack on a state court judgment in a federal bankruptcy court. Judge Fusté held that while *res judicata* prohibits a claim from being litigated outside of the normal appeals process, there is an exception to the application of the principle where it is alleged that there was fraud underlying the original judgment. In the Matter of Montalvo, 157 B.R. at 512-13. But even in this situation, "if the fraud at issue was the subject of litigation in a previous suit, such a suit itself has a preclusive or *res judicata* effect." Id. at 513.

On December 22, 1993, the Bank submitted by motion the state court documents in support of its contention that fraud was previously litigated in this case. The Bank contends that the documents submitted show that Bonilla brought an action in state

court, case CS 84-552, seeking relief from the judgment obtained by the Bank in CS 81-1138. In CS 84-552, the Bank contends that the state court was presented with and decided the issue of whether the Bank had obtained the judgment in CS 81-1138 by fraud.

In his response of January 7, 1994, Bonilla contends that the issue of whether the Bank committed fraud in the proceedings in CS 81-1138, was not litigated in CS 84-552. Bonilla argues that "the fraud in the proceedings was committed for the creditor defendant to obtain judgment in their behalf in the collection of usurious interest." In his complaint in this adversary proceeding, Bonilla alleges that the Bank committed fraud on the court by misrepresenting to the Superior Court the law which applied to determine the allowable interest rate. Bonilla alleges that the Bank's misrepresentations allowed it to collect interest in excess of the rate allowed by law.

Based on Bonilla's arguments and the documents submitted by the Bank and Bonilla, it becomes clear that the fraud in the proceedings that Bonilla is now alleging is the same fraud that was alleged in case CS 84-552, which was an action brought by Bonilla to obtain relief from the judgment entered in CS 81-1138. Bonilla's allegations all relate to what he alleges to be a fraud that condemned him to pay interest at the rate of 17% in violation

of the usury law.

When Bonilla defended in CS 81-1138, the original lawsuit in which the Bank obtained judgment against him, Bonilla responded to the Bank's motion for summary judgment indicating as defenses to the Bank's action that he had been involved in an accident and that a fire had occurred destroying his home. Bonilla did not deny that he owed the money but rather contended that he was unable to pay at the time. The Superior Court rejected Bonilla's defenses and entered judgment in favor of the Bank.

Based on the loan documents, the Superior Court determined that the applicable interest rate was 14% or the maximum allowed by law. The Court determined that the loan was evidenced by a demand note and determined as a matter of law that the maximum interest rate allowed for demand notes was 17%. Accordingly, the Superior Court allowed interest at the rate of 17%. The Supreme Court of Puerto Rico subsequently affirmed the Superior Court's determination of the allowable interest rate.

Bonilla filed CS 84-552 seeking relief from the judgment obtained by the Bank in CS 81-1138. With respect to fraud on the court, in paragraph four of the second cause of action in Bonilla's amended complaint in CS 84-552, Bonilla alleged that the fraud on the court consisted of the Bank indicating in its motion for

summary judgment that the demand note in CS 81-1138, provided for recovery of interest upon the loan at a rate of 14% or the maximum interest allowed by law. Bonilla alleged that in representing to the court that on the expiration of the loan term, the loan converted to a demand note and that it was regulated under a particular regulation that permitted interest at 17%, the Bank committed fraud.

In a decision on summary judgment in CS 84-552 issued on March 11, 1986, the Superior Court discussed both the issue of fraud on Bonilla and fraud on the court. On the first cause of action, the Court stated that "[Bonilla] imputes fraud to the [Bank]. When it deals with fraud between the parties, the motion for relief must be presented within the term of 6 months, which was not done. Municipio de Coamo v. Tribunal Superior, 99 D.P.R. 932 (1971)."

(translation ours).

On the second cause of action the court stated that:

Fraud to the Court is alleged. The statement is frivolous not only because it is not true that the promissory note calls for the collection of 14% annual interest, (it also states "or at the maximum interest rate that the Board of Regulation of Interest Rates and Financing Charges of Puerto Rico permits to be charged to the subscribing party while the present obligation is not paid . . .)" but because likewise this Court as well as the Honorable Supreme Court of Puerto Rico considered the matter, expressing the Honorable Supreme Court that interest at 17% was the "rate permitted at that time." Judgment of January

20, 1983, number 0-82-547.

(translation ours.) Accordingly, the Superior Court dismissed Bonilla's complaint.

On April 3, 1986, the Superior Court denied Bonilla's motion for reconsideration. The Court indicated that Bonilla failed to show fraud in the complaint and that the amended complaint was not accepted. The court also found that the statements about the applicable interest rates were frivolous. On May 8, 1986, the Supreme Court of Puerto Rico issued a resolution declining to hear the case.

A party may not request the bankruptcy court to reexamine issues determined by a previous judgment. Heiser v. Woodruff, 66 S.Ct. 853, 858 (1946). "Nor can an attack be sustained on a judgment allegedly procured by fraudulent representations of the plaintiff, when the charge of fraud has been rejected in previous litigations by the parties to the suit in which the judgment was rendered or their representatives." Id. (citations omitted). If the issue of fraud was raised and decided against the party, the principles of *res judicata* preclude the revival of the litigation in bankruptcy. Id. at 857.

Bonilla alleged in state court that the bank had defrauded him and that the Bank had defrauded the court to obtain usurious

interest. Both the Superior Court and the Supreme Court of Puerto Rico rejected these arguments. The Superior Court and the Supreme Court of Puerto Rico determined that interest at the rate of 17% was the rate permitted by law. Accordingly, this issue is *res judicata* and may not be relitigated.

The issue of fraud on the court is *res judicata* notwithstanding that Bonilla's amended complaint in CS 84-552 was not accepted by the Superior Court. The Superior Court's refusal to accept the amended complaint and the Court's decision dismissing the complaint was affirmed by the Supreme Court of Puerto Rico. Under the Laws of Puerto Rico, the doctrine of *res judicata* precludes a party from "relitigating the questions they raised or could have raised in the petition for relief from judgment." Figueroa v. Banco de San Juan, 108 Official Translations of the Supreme Court of Puerto Rico 723, 729, 108 D.P.R. 680 (1979) (citations omitted). See also Arecibo Radio Corp. v. Com. of Puerto Rico, 825 F.2d 589, 592 (1st Cir. 1987); Rocca v. Royal Bank of Canada, P.R. Inc., 726 F.Supp. 15, 17 (D. Puerto Rico 1989). Accordingly, Bonilla is precluded from relitigating issues that were raised in his amended complaint in CS 84-552, even though the complaint was not accepted by the state courts.

Bonilla's allegations of fraud also suggest that the state

courts erred in determining the applicable interest rate. A party can not, however, "resort to the mechanism of an independent action . . . [for] the purpose of substituting the proceeding for review or of providing an additional relief against an erroneous judgment." Figueroa v. Banco de San Juan, 108 Official Translations of the Supreme Court of Puerto Rico at 729 (citations omitted). Judicial error is excluded as a ground for relief from judgment. Id. at 730 (citation omitted). Thus, Bonilla's claim that in determining the interest rate, the state courts adopted and applied a law that had been repealed is not a basis for relitigating in this court the state courts' determination of the allowable interest rate. Whether or not the state courts erred in determining the allowable interest rate, the determination by the state courts of the appropriate rate is not a basis for an argument that the judgment was obtained by fraud.

This court concludes that Bonilla's claim that the Bank committed fraud in the proceedings to obtain interest in excess of that allowed by the usury law is *res judicata*.

ORDER

Bonilla's adversary complaint shall be, and it hereby is, dismissed with prejudice.

Judge de Jesús disqualified herself from this adversary

proceeding, but not from the underlying bankruptcy case.

Accordingly, the clerk will refer the bankruptcy case back to Judge de Jesús for any further action that may be required.

IT IS SO ORDERED.

Dated at San Juan, Puerto Rico this ____ day of December, 1994.

By the Court:

Gerardo A. Carlo
U.S. Bankruptcy Judge